

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 2150

SPONSOR: Banking and Insurance, Commerce, Economic Opportunities and Consumer Services  
Committees and Senator Lynn

SUBJECT: Moving Services

DATE: April 15, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Favorable
2.	Kruse	Maclure	CM	Fav/CS
3.	Knudson	Deffenbaugh	BI	Fav/CS
4.				
5.				
6.				

## I. Summary:

Committee Substitute for Senate Bill 2150 provides small moving companies, when registering with the Department of Agriculture and Consumer Services (Department), the option of submitting a bond or certificate of deposit instead of purchasing cargo legal liability insurance now required by law. The option applies to a mover who operates fewer than three vehicles. The bond or certificate of deposit must list the Department as the beneficiary and must be used for the benefit of any consumer who is injured by the fraud, misrepresentation, breach of contract, or financial failure of a mover. The bond or certificate of deposit may only be used for payment of claims adjudicated in an administrative proceeding with the Department. The bond or certificate of deposit is open to successive claims, but the aggregate amount of claims may not exceed the amount contained in the bond or certificate of deposit. If proceeds from a bond or certificate of deposit are exhausted, the mover must obtain and maintain an additional bond or certificate of deposit. Failure to do so shall result in the department revoking the license of the mover.

This bill substantially amends sections 507.03 and 507.04 of the Florida Statutes.

## II. Present Situation:

### Regulation of Moving Services

In 2002 the Legislature enacted ch. 507, F.S., to regulate the intrastate moving industry in Florida.<sup>1</sup> A mover is defined as any person who engages in the transportation or shipment of household goods for compensation.<sup>2</sup> Any mover wishing to do business in Florida must register

<sup>1</sup> Chapter 2002-53, L.O.F.

<sup>2</sup> Section 507.01(8), F.S.

annually with the Department of Agriculture and Consumer Services.<sup>3</sup> To obtain a registration certificate, the mover must file an application, pay a registration fee in the amount of \$300,<sup>4</sup> and meet statutory qualifications, including proof of insurance coverage.<sup>5</sup>

The law requires a mover to maintain cargo liability insurance coverage in the amount of at least \$10,000 per shipment<sup>6</sup> and limits the mover's liability to not less than 60 cents per pound of cargo.<sup>7</sup> A mover must also maintain minimum limits of motor vehicle coverage in the amounts of: \$50,000 per occurrence for a commercial motor vehicle with a gross weight of less than 35,000 pounds; \$100,000 per occurrence for a commercial motor vehicle with a gross weight of more than 35,000 pounds, but less than 44,000 pounds; and \$300,000 per occurrence for a commercial motor vehicle with a gross weight of 44,000 pounds or more.<sup>8</sup>

If the Department finds that a mover has violated any of the provisions of the law, rules, or orders issued thereunder, the Department may enter an order doing one or more of the following:

- Issuing a notice of noncompliance under s. 120.695, F.S.
- Imposing an administrative fine not to exceed \$5,000 for each act or omission.
- Directing that the person cease and desist specified activities.
- Refusing to register, or revoking or suspending a registration.
- Placing the registrant on probation for a period of time, subject to such conditions as the Department may specify.<sup>9</sup>

Since implementation of the 2002 law, some small moving company owners have reported to the Department that the owners have encountered difficulty obtaining the required liability insurance or discovered that the insurance is very expensive to purchase.

### **Surety Bonds**

A suretyship bond is a contractual arrangement between the surety (insurer selling the bond), the principal (here, the mover), and the obligee (here, the customer of the insurer) whereby the surety agrees to protect the obligee if the principal defaults in performing the principal's contractual obligations.<sup>10</sup> The bond serves to create joint and several liability between the principal and the surety, allowing the obligee to collect from either party. Surety bonds are sold by licensed property and casualty insurers in Florida. A major difference between a surety bond and a standard property and casualty insurance policy is that the surety bond does not protect the principal against a judgment. Thus, in the case of a mover, the surety (insurer) would have the right to recover from the principal (mover) the full amount of any damages paid out by the surety pursuant to a judgment.

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<sup>3</sup> Section 507.03(1), F.S.

<sup>4</sup> Section 507.03(3), F.S.

<sup>5</sup> Section 507.03(9), F.S.

<sup>6</sup> Section 507.04(1)(a), F.S.

<sup>7</sup> Section 507.04(1)(c), F.S.

<sup>8</sup> Section 507.04(1)(b)1.-3., F.S.

<sup>9</sup> Section 507.09(1)(a)-(e), F.S.

<sup>10</sup> Blacks Law Dictionary, pg. 181 (Deluxe 6<sup>th</sup> ed. 1990).

### III. Effect of Proposed Changes:

The bill amends s. 507.03, F.S., by revising mover registration requirements to allow certain movers the option of providing proof of bonding instead of proof of insurance coverage when registering with the Department of Agriculture and Consumer Services (Department). A mover, depending on the number of trucks it operates, is provided the option of submitting evidence of current and valid insurance coverage or a bond or certificate of deposit.

The bill provides that for a mover who operates three or more vehicles, the mover must maintain current and valid cargo legal liability valuation and insurance coverage for loss or damage to household goods arising or resulting from the negligence of the mover, its employees, or its agents, in an amount not less than \$10,000 per shipment. The bill also provides a mover who operates fewer than three vehicles the option of maintaining cargo legal liability coverage or maintaining a performance bond in the amount of \$25,000. The bond must be issued by a surety authorized to do business in this state. In lieu of the bond, the mover may establish a certificate of deposit in a state banking institution.

The bill provides that the original bond or certificate of deposit must:

- be filed with the Department;
- name the Department as the beneficiary; and
- be made in favor of the Department for the use and benefit of any consumer who is injured by the fraud, misrepresentation, breach of contract, or financial failure of the mover, or by the violation of any provision of this chapter by the mover.

The bill provides that any liability may be enforced either in a proceeding in an administrative action or by filing a judicial suit at law in a court of competent jurisdiction. However, the bill limits the use of the bond or certificate of deposit to payment of claims adjudicated by the Department. The bill also provides that the aggregate payout may not exceed the amount of the bond or certificate of deposit. If the proceeds of the bond or certificate of deposit are exhausted, the mover must obtain and maintain an additional bond or certificate of deposit in the amount of \$25,000. If the mover fails to obtain the additional bond or certificate of deposit, the department must revoke the license of that mover.

The bill takes effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to representatives of the Florida Movers and Warehousemen's Association, obtaining a bond may be slightly more expensive than purchasing insurance in the long run. However, obtaining a bond does offer an option for small moving companies that are unable to obtain cargo legal liability coverage. It is unknown what costs, if any, will be realized by moving companies that exercise this option.

The bill states that recovery from the surety bond is only available if the judgment is entered by and through an administrative proceeding before the Department of Agriculture and Consumer Services. Thus, if a consumer obtains a judgment by filing a judicial suit at law, the proceeds of the surety bond will not be available to satisfy the judgment. Thus, consumer dealing with small movers using surety bonds in lieu of coverage will need to engage in an administrative proceeding to have access to funds that guarantee judgment. Consumers dealing with movers that have a liability insurance policy will continue to be able to file actions at law and have access to the policy funds to satisfy a judgment.

C. Government Sector Impact:

The bill provides that an administrative proceeding before the Department of Agriculture and Consumer Services (Department) is necessary in order for a consumer to satisfy a judgment through a surety bond. Currently, the Department does not adjudicate such matters, and it is possible that there may be additional costs in starting to do so.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.